

THE TREATY OBLIGATIONS OF THE UNITED STATES  
RELATING TO THE PANAMA CANAL.

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I beg leave to call to the attention of the society a subject which has been considerably discussed of late, in Congress and throughout the country, and cannot be considered in any sense to be new; but, in spite of this fact, and of a certain familiarity which it has acquired in men's minds from frequent mention, I am inclined to the thought that it can scarcely be too plainly or too forcibly brought before the sober consideration of the American people,—the international obligations undertaken by the United States in the treaties relating to the Panama Canal.

The subject of a canal across the narrow strip of land that joins the two continents is one, indeed, that is nearly contemporaneous with the discovery of America; for its advantages made themselves evident even to the earliest explorers and navigators, who, upon returning to Spain, in 1528—more than 150 years before William Penn entered the Delaware,—presented to the Emperor Charles V. a plan for the opening of a waterway through the Isthmus of Panama; a project that never was lost sight of and which acquired greater importance to us, both from our political and commercial point of view, after our separation from Great Britain and the establishment of our independent nationality.

In 1826, Mr. Clay, then Secretary of State, wrote, in connection with a Congress at Panama:

“A cut or canal for purposes of navigation somewhere through the isthmus that connects the two Americas, to unite the Pacific and Atlantic Oceans, will form a proper subject of consideration. That vast object, if it should be ever accomplished, will be interesting, in a greater or less degree, to all parts of the world.”

We were not in a position at that time to think of undertaking such a work ourselves, though our government was alive to the opportunity and wished to participate in the advantages that would arise from a canal; and Mr. Clay added:

“If the work should ever be executed so as to admit of the passage of sea-vessels from ocean to ocean, the benefit of it ought not to be exclusively appropriated to any one nation, but should be extended to all parts of the globe upon the payment of a just compensation or reasonable tolls.”

The progress of events and the growth of our importance as a nation enlarged the interest of the people of the United States in the passage through the isthmus, which was taken up in the House of Representatives in compliance with a memorial from the merchants of New York and Philadelphia in 1839. A resolution was adopted by the House that the President should be requested:

“To consider the expediency of opening or continuing negotiations with the governments of other nations, and particularly with those the territorial jurisdiction of which comprehends the Isthmus of Panama, for the purpose of ascertaining the practicability of affecting a communication between the Atlantic and Pacific Oceans, by the construction of a ship canal across the isthmus, and of securing forever the free and equal right of navigating such Canal to all nations.”

A treaty was entered into, seven years later, in 1846, between the United States and the Republic of New Granada, which was the first effective step taken by our government in the direction of the actual transit across the isthmus and of our participation in its construction and maintenance of way. This was a treaty of peace, amity, navigation and commerce with New Granada, and was continued in operation by the Republic of Columbia into which that state was subsequently transformed, and it is to this agreement, entered into by us during the administration of President Polk, through an immense amount of negotiation and correspondence that has taken place since between ourselves and other governments, particularly those of the Central and South American republics as well as Great Britain and France, that may be traced the origin of the interests and claims under which the United States have constructed the canal and are in control of the territory of the canal zone on the isthmus to-day. The treaty extended to the citizens of the

United States all the privileges and immunities of commerce and navigation in the ports of New Granada that are enjoyed by the Granadian citizens themselves, and the government of New Granada guaranteed to the United States, "that the right of way or transit across the Isthmus of Panama upon any modes of communication that now exist or that may be hereafter constructed, shall be open and free to the Government and citizens of the United States." In return for these favors the United States guaranteed: "positively and efficaciously, to New Granada, the perfect neutrality of the isthmus, with the view that the free transit from the one to the other sea may not be interrupted in any future time while this treaty exists"; and, in consequence, the United States guaranteed, "in the same manner, the rights of sovereignty and property which New Granada has and possesses over the said territory."

Therefore we had acquired a controlling influence at Panama which enabled us to play so prominent a part that we might begin to make effective plans for the construction of a canal; whether we should decide to build it ourselves, or whether the work should be done by others, it was quite certain that no canal could be made without our consent. We had secured the constant enjoyment to ourselves of the commercial privileges enjoyed by the inhabitants of New Granada, and as New Granada was a weak power we made the stipulation in return for the favors that she had shown to us that the United States government with its superior strength would protect New Granada in her rights of ownership on the Isthmus of Panama and would guarantee that she should always maintain her sovereignty over that territory. We failed afterwards to carry out our agreement in this respect; and the protest of Colombia, taken upon its merits as a matter of international law, is very serious,—but that belongs to another subject.

Our attitude was made plain at that time by the message with which the President submitted this treaty to the Senate, in 1847, for its approval and ratification, in which he announced formally the policy of the United States to develop the communication through the isthmus for the benefit of the commerce of the world at large.

Mr. Polk declared that the treaty did not "constitute an alliance

for any political object, but for a purely commercial purpose, in which all the navigating nations of the world have a common interest."

"The ultimate object is to secure to all nations the free and equal right of passage over the isthmus. If the United States should first become a party to this guaranty, it cannot be doubted that similar guarantees will be given to New Granada by Great Britain and France."

If the proposition should be rejected by the Senate, the President said, "we may deprive the United States of the just influence which its acceptance might secure to them, and confer the glory and benefits of being the first among the nations in concluding such an arrangement upon the government either of Great Britain or France."

But, at the time that this treaty was made, Great Britain claimed dominion in certain parts of Central America over which she exerted authority and of which she was in actual possession; these were the territory extending along the coast of Guatemala, called Belize or British Honduras, including an island called Ruatan and other Bay Islands, and she asserted a protectorate over a long stretch of Nicaragua inhabited by the Mosquito Indians, called the Mosquito Coast. She had a more direct claim upon and closer personal relation with the people of Central America than we had,—her occupation of British Honduras dating back at least to a treaty which she made with Spain in 1786.

In pursuance of our policy, however, of creating a neutral territory at the isthmus, and of preventing the establishment there by any single foreign nation of exclusive control, we prop<sup>o</sup>sed, in 1850, that Great Britain should unite her interests with ours in order that not only the canal should be built upon fair and equitable terms, "but that its construction should inure to the benefit of all nations and should offer equal opportunity to the commerce of the world; and for this purpose we invited Great Britain, and she consented, to enter into a convention with us with the intention of setting forth and fixing the views and intentions of both governments, with reference to any means of communication by ship canal which may be constructed between the Atlantic and Pacific Oceans by way of the river San Juan de Nicaragua, to any port or place on the Pacific

Ocean." This was the Clayton-Bulwer Treaty, which was signed at Washington on the nineteenth of April, 1850, by Mr. John M. Clayton, then Secretary of State, and Sir Henry Lytton Bulwer, British Minister to the United States. By it:

"The Governments of the United States and Great Britain declare that neither the one nor the other will ever obtain or maintain for itself any exclusive control over the ship Canal, will not fortify, or colonize, or exercise any dominion over Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America; also, that neither Great Britain nor the United States will take advantage of any intimacy or alliance that it may have with any government through whose territory the Canal shall pass, for the purpose of acquiring or holding any rights or advantages in regard to commerce or navigation through the Canal which shall not be offered on the same terms to the Citizens or subjects of the other."

The treaty having thus provided for the joint action of Great Britain and the United States, and having agreed that the two governments should give their support and encouragement to any persons or company who might first offer to begin the canal with the necessary concessions and capital, the two contracting nations included in it the following statement:

"The Governments of the United States and Great Britain having not only desired, in entering into this Convention, to accomplish a particular object, but also to establish a general principle, they hereby agree to extend their protection, by treaty stipulations, to any other practicable communications, whether by canal or railway, across the isthmus which connects North and South America, and especially to the interoceanic communications, should the same prove to be practicable, which are now proposed to be established by the way of Tehuantepec or Panama";—it being understood—"that the parties constructing or owning the same shall impose no other charges or conditions of traffic thereupon than the aforesaid Governments shall approve of,—and that the same canals or railways, being open to the citizens and subjects of the United States and Great Britain on equal terms, shall also be open on like terms to the citizens and subjects of every other State which is willing to grant thereto such protection as the United States and Great Britain engage to afford."

Thus, the Clayton-Bulwer treaty became the foundation for the understanding between the United States and Great Britain and provided for an absolute equality between them in regard, not only to the protection which they united to give to any interoceanic communication that should be established, but also formally declared that

both governments should approve of any charges or conditions of traffic,—that is to say, tolls,—which might be imposed, and that no such tolls should be imposed, in fact, which had not the approval and consent of both governments.

The United States government considered that it had entered into an agreement that was both just and equitable toward both parties, as a definition of the rights and duties of each and a basis upon which the isthmian canal should be built as a benefit to the commerce of the world.

And further, we not only held ourselves to be bound by the stipulations of this agreement, but we called upon Great Britain to sustain her part of it by a very strict interpretation of the law, quite beyond what the British Cabinet had expected in entering into the engagement, and a good deal more than it was willing at first to concede; for we contended that by the provisions of the treaty both nations had promised not: “to make use of any protection or alliance which either has or may have with any state or people for the purpose of fortifying or colonizing Nicaragua, Costa Rica, the Mosquito Coast, or any part of Central America, *or of assuming or exercising dominion over the same.*” And we called upon the British government, under this provision, not only not to extend its political influence in Central America but also to give up such claims as it might already have acquired in British Honduras, the Mosquito Coast and the islands of the sea.

This was not at all what Great Britain had understood to be her position under the treaty, and Lord Clarendon declared, (1854) that the contracting parties did not intend to include within its action “either the British settlement in Honduras nor the islands known as its dependencies,” that whatever claims or influence Great Britain may have had there previously should remain undisturbed,—that the only question which might arise in regard to this was one relating to the boundary line of Honduras,—as to what was British Honduras and what was not.

“To this settlement and these islands the treaty we negotiated was not intended by either of us to apply,—and the British government is more warranted in this conclusion from the fact that the United States sent a

Consul to the settlement, in 1847, which Consul had received his exequatur from the British government which was a recognition of the British claim.

“But, on our side,” Mr. Marcy, Secretary of State, declared in answer to this, (1856), “Great Britain had not any rightful possessions in Central America, and at the same time, if she had any, she was bound by the express tenor and true construction of the Clayton-Bulwer Treaty to avacuate them, so as to stand on precisely the same footing in that respect as the United States.”

This defines our position in regard to the affairs of the isthmus; it insists that Great Britain shall place herself upon an exact equality with us; that she must give up any claims or privileges in which we did not share, in order that we may be precisely alike; but it marks also our obligation toward Great Britain,—for whilst we insisted that she should be on an equal footing with us, we promised that we should be upon an equal footing with her. We won our case and England, giving up the Mosquito Coast and the islands, came ultimately to our understanding, because of the Clayton-Bulwer Treaty;—but the provision of the treaty was that: neither the United States nor Great Britain should exert any influence that either may possess, “for the purpose of acquiring directly or indirectly, for the citizens of the one any rights or advantages in regard to Commerce or navigation through the said Canal which shall not be offered on the same terms to the citizens or subjects of the other.”

General Cass said, (1858):

“What the United States want in Central America, next to the happiness of its people, is the security and neutrality of the inter-oceanic routes which lead through it. If the principles and policy of the Clayton-Bulwer Treaty are carried into effect, this object is accomplished.”

It is to be observed that there are two distinct points of agreement which are set forth in this Treaty as well as in all of the voluminous correspondence that had taken place in regard to it,—which points of agreement have never been lost sight of as the basis of the negotiations relating to the Canal across the isthmus; namely the neutrality of the canal itself and the absolute equality between the United States and Great Britain in connection with it. We demanded it from the start and Great Britain has acceded to

our demand with that principle in view, which has never been changed.

She was willing to join with us in building the canal, or she was willing that we should build it alone. And when after a good many years of delay we announced to her that we were in a position to undertake the work, and we made suggestions to her looking to that result, she agreed to make a new treaty with us, to supersede the old one, in order that the intended benefits might be secured and the work should progress.

The new treaty was signed in November, 1901, by Mr. John Hay, Secretary of State, and Lord Pauncefote, the British Ambassador, whence it has since become widely known as the "Hay-Pauncefote Treaty."

By this contract the two powers

"Being desirous to facilitate the construction of a ship-canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the nineteenth April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the 'general principle' of neutralization established in Article VIII. of that Convention, agreed that: The present Treaty shall supersede that of April 19, 1850. That the canal may be constructed under the auspices of the Government of the United States,—and that, subject to the provisions of the present Treaty, the United States shall enjoy all the rights incident to its construction, as well as the exclusive right of providing for the regulation and management of the canal. And, in order to make plain the understanding between ourselves and the British Government with whom we were dealing, we made this specific stipulation: (Article III.).

"The United States adopts, as the basis of the neutralization of such ship-canal, the Rules, substantially as embodied in the Convention of Constantinople (28 October, 1888), for the free navigation of the Suez Canal, that is to say:

"1. The Canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise."

This is not an obscure subject. It is a treaty into which the United States entered openly and freely with Great Britain,—a treaty based upon all that had gone before, both in our correspondence and



our engagements under which Great Britain placed herself and her interests upon an equality with us and with our interests in Central America. The situation is one that we have created for ourselves.

It is not a question as to whether we made a good bargain or a bad one, but it is a matter of the greatest importance to the American people that the Government of this country shall fulfill its engagements and carry out always and in every particular its international obligations.

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